

Idaho Industrial Commission

A Guide for Employers

FAQ

- **What Are the Penalties If I Don't Have Workers' Compensation Insurance?**
 - First of all, if one of your employees is injured and you do not have workers' compensation insurance in effect at the time of the injury, you can be personally liable for all benefits, including medical and wage loss, provided under the Workers' Compensation Law. An uninsured employer may also be liable for a penalty of 10% of the amount of medical and wage loss benefits as well as attorney fees if an attorney represents the injured worker.
 - In addition, employers who operate without workers' compensation insurance, can be liable for a penalty of \$2.00 per day per employee or \$25.00 per day, whichever amount is greater. The Workers' Compensation Law authorizes the Industrial Commission to file a lawsuit in district court to obtain an injunction prohibiting the employer from operating the business while in violation of the Workers' Compensation Law.
 - Finally, operating a business without workers' compensation insurance is a misdemeanor under Idaho law and the employer may be subject to criminal penalties.
- **What If I Use Contract Labor or Sub-Contractors?**
 - If you have contract workers, whether the contract is verbal or written, the workers may be considered employees under the Workers' Compensation Law. To ensure you are in compliance with the law, contact an Industrial Commission Employer Compliance representative to discuss your situation. Your requirement for coverage is considered on a case-by-case basis.
- **What If I Operate Out-of-State?**
 - Idaho has [agreements with some of its neighboring states](#) that allow Idaho employers to cover their employees under an Idaho workers' compensation policy when they are working out-of-state. If you plan to perform work in another state, contact an Employer Compliance office to determine what other requirements may apply.
- **Can I Buy Coverage for Exempt Employment?**
 - In some cases, you may elect coverage for exempt employment. Contact your insurance agent or representative for more information on electing coverage for exempt employment.
- **How Much Does Workers' Compensation Insurance Cost?**
 - Workers' compensation insurance premiums are based on payroll and vary according to the type of business or work performed by the employees. The employer is required by law to pay the entire cost of workers' compensation insurance coverage. Deducting any portion of the cost of these premiums from

employee wages is specifically prohibited. Your insurance agent or representative can assist you with determining your individual workers' compensation insurance cost.

- **Where Do I Obtain Workers' Compensation Insurance?**

- Employers can obtain workers' compensation insurance through one of four options:

- ***Private Insurance***

- There are over 270 private insurance companies authorized to issue workers' compensation insurance in Idaho. For information, contact an insurance agent or company representative.

- ***State Insurance Fund***

- Managed by the State and available to Idaho employers, the State Insurance Fund is headquartered in Boise, with field offices located throughout Idaho. Contact any of their offices or your insurance agent for more information.

- ***Assigned Risk Pool***

- Employers unable to obtain coverage from private insurance companies or the State Insurance Fund can apply for coverage through the assigned risk pool. The National Council on Compensation Insurance (NCCI) administers the pool. Contact your insurance agent or NCCI at (800) 622-4123 for more information.

- ***Self-Insurance***

- This option is available to Idaho employers with large payrolls and who are able to meet specific requirements. The Idaho Industrial Commission must grant approval for self-insurance.

Exemptions

Employers with one or more full-time, part-time, seasonal, or occasional employees are required to maintain a workers' compensation policy unless specifically exempt from the law. Workers' Compensation is required to be in place when the first employee is hired. Employment that **may be exempt** from required coverage includes:

- Household domestic service.
- Employment of family members living in the employer's household (applies only to sole proprietorships).
- Employment in a business that is not carried on by the employer for the sake of pecuniary gain. (An example would be a homeowner who is building his own home and who hires workers to assist in building the home.)
- The owner of a sole proprietorship; working members of a partnership or limited liability company; or individuals who are corporate officers, and who own at least 10% of the stock and who are directors, if the corporation has directors.
- Employment covered under Federal Workers' Compensation Laws.
- Pilots of agricultural spraying or dusting planes (under certain conditions).
- Associate real estate brokers and real estate salespersons when paid solely by commission.
- Volunteer ski patrollers.
- Officials of athletic contests in secondary schools only (grades 7-12 inclusive or any combination thereof).
- Casual employment or work which occurs occasionally or at irregular times and which is not related to the type of business conducted by the employer.
- Employment as an outworker. (Defined as a person to whom materials are furnished to be treated in any way at a location not under the control of the employer. An example would be a worker who receives mass mailing materials from the employer and assembles them at home.)
- Certain family member employees of a sole proprietor employer who do not reside in the same household as the employer may file an election for exemption with the Industrial Commission. For detailed information or to obtain copies of the required form, contact one of the Industrial Commission offices.

To determine if you qualify as an exempt employer, contact one of the Industrial Commission offices.

EMPLOYEE VS INDEPENDENT CONTRACTOR

Coverage under the Workers' Compensation Law is dependent upon the existence of an employer-employee relationship. Considered collectively, the four right of control factors distinguish an employee from an independent contractor.

1. DIRECT EVIDENCE OF THE RIGHT TO CONTROL

Compliance with instructions - Control is present if the person for whom the services are performed has the right to require compliance with instructions.

Training - Training through meetings, attending classes, or apprenticeship with a more experienced worker indicates the right to control.

Integration - Integration of the worker's services into the principal's business operations shows that the worker is subject to direction and control.

Services rendered personally - If the services must be rendered personally, then the right to control is suggested.

Hiring, firing, supervising and paying assistants - If the person for whom services are rendered hires, discharges, and pays workers, then that factor shows control over all workers. If a worker engages his own assistants, he may be an independent contractor.

Set hours of work - Control is indicated if set hours of work are established by the person for whom services are rendered.

Full time required - If the worker devotes substantially full time to the business of the person for whom services are rendered, then such person has control over the amount of time the worker can work and impliedly restricts the worker from doing other gainful work.

Order or sequence determined by principal - If the worker performs services in the order or sequence determined by the person for whom the services are performed, the worker is likely an employee.

Oral or written reports - A requirement that the worker submit regular oral or written reports to the principal indicates control.

Payment of business and/or traveling expenses - If the principal ordinarily pays the worker's business or traveling expenses, then the worker is usually considered an employee.

Working for more than one firm at a time - If a worker performs service for several unrelated persons or firms at a time, this is indicative of an independent contractor relationship.

Making service available to the general public - If a worker makes his services available to the general public on a regular and consistent basis this indicates an independent contractor relationship.

Competitive selection among subcontractors - If the principal uses some competitive means for reducing his own cost in selecting a subcontractor, then the principal may be a prime contractor instead of an employer.

2. METHOD OF PAYMENT

Payment on a regular, periodic basis - Payment by the hour, week, day, month or other regular periodic interval generally points to an employer-employee relationship.

Realization of profit or loss - A worker who can realize profit or suffer a loss as a result of the worker's services (beyond the profit or loss ordinarily realized by the employees) is generally considered an independent contractor.

3. FURNISHING OF MAJOR ITEMS OF EQUIPMENT

Doing work on the employer's premises - If the work is done on the premises of the person for whom the services are performed, this shows control over the worker, especially if the work could be done somewhere else.

Furnishing tools and equipment - If the person for whom services are performed furnishes significant tools, materials, or other equipment, this indicates a direct employment relationship.

Significant investment - If the worker invests in facilities that are used in performing services and that are not typically maintained by employees, this indicates an independent contractor relationship.

Realization of profit or loss - This factor overlaps the method of payment but addresses whether sale of the business assets would provide the worker with a gain or recovery. If so, he may be an independent contractor.

4. RIGHT TO TERMINATE RELATIONSHIP WITHOUT LIABILITY

Continuing relationship - A continuing relationship between the worker and the principal indicates a direct employment relationship, even if the work is performed at recurring irregular intervals.

Right of employer to discharge - The principal's right to discharge the worker without liability indicates a direct employment relationship.

Employee's right to terminate - If the worker has the right to stop working at any time without contractual liability, this is indicative of an employment relationship.